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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,960	01/19/2001	Mitsukazu Momosaki	ALPHA 3.0-001	9159

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EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,960

Applicant(s)

MOMOSAKI, MITSUKAZU

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 6-9, 11, 12, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Burnham.

Burnham discloses the same invention including a cutter body (Fig. 1) including upper (3) and lower (4) handles having a pivot (5) securing the handles together (Fig. 2), that the lower handle has an upper blade end (8) extending beyond the pivot (Fig. 1) and having an arcuate (7) first blade edge (10), that the upper handle has a lower blade end (12) extending beyond the pivot and opposing the upper blade end (Fig. 1), that the lower blade end has an arcuate (11) second blade edge (20), that the handles and blade ends being pivotal about said pivot to provide opposing movement of the first second blade edges between an open and closed position (Figs. 1-2), that the first and second blade edges are disposed in opposing positions (Fig. 3) and the space between the first and second blade edges varies along the length of the edges when the first and second cutting edges are in the closed position (Fig. 4), that the first and second blades edges each have outer portions (9 and 14) and an inner portion (7 and 11) and the distance between the outer portions is less than the distance between inner portions (Fig. 4), that the outer portions of the blade ends are curved (Fig. 3), a spring connected

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between the handles (6), that the opposing blade edges are disposed to be perpendicular to the surfaces of brittle material (Figs. 3 and 8), that one of the blade edges has an angled inner surface providing a sharp edge (Column 2 lines 30-34), that the first and second blade edges each contain a portion parallel to the axis of the pivot (Fig. 1), and that the curved first and second blade edges are convex (Fig. 3).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burnham in view of Schwartz. Burnham discloses the invention but fails to disclose a stop means connect between the upper and lower handles. Schwartz teaches the use of a stop means (27). Therefore, it would have been obvious to one skilled in the art, at the time of the invention, to have provided Burnham with a stop means for maintaining the handles in a normally open position.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burnham in view of Berg. Burnham discloses the invention but fails to disclose a guide secured to the lower blade end. Berg teaches of a guide (18) secured to the lower blade end (Fig. 3). Therefore, it would have been obvious to one skilled in the art, at the time of the invention, to have provided Burnham with a guide to make the cutting easier.

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6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burnham in view of Welborn. Burnham discloses the invention including that the first and second blade edges each have two opposing outer portions and an opposing inner portion but fails to disclose that the space between one of the opposing outer portions is less than the space between the other opposing outer portion. Welborn teaches of first (46) and second (30) blade edges with the space between one of the opposing outer portions (Fig. 3) is less than the space between the other opposing outer portion (44). Therefore, it would have been obvious to one skilled in the art, at the time of the invention, to have provided Burnham with blade edges where the space between one of the opposing outer portions is less than the space between the other opposing outer portion to provide for a more gradual cut.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burnham. Burnham discloses the invention but fails to disclose that the first and second blade edges are concave. It would have been an obvious matter of design choice to make the different portions of the first and second blade edges of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Taft, Lenarduzzi, Wagner, David, Freedman, Hepworth et al., Yu, Horng, Wachtel et al., Wu, and Rinaldi.

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9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen N. Shoap can be reached on 703-308-1082. In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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December 9, 2002

Allan

Allan N. Shoap
Supervisory Patent Examiner
Group 3700